THIRTIETH CONGRESS—FIRST SESSION.

Report No. 736.

[To accompany bill H. R. No. 579.]

HOUSE OF REPRESENTATIVES.

INDIAN TERRITORY, WEST OF THE MISSISSIPPI.

June 27, 1848.

Mr. McIlvaine, from the Committee on Indian Affairs, made the following

REPORT:

The Committee on Indian Affairs, to whom was referred the resolution of the House instructing the committee "to inquire into the expediency of organizing a territorial government in the Indian country west of the Mississippi, to which the Indians have been removed by the government," report:

That, from a careful examination of the subject, it appears that the policy of the government, from its foundation forward, has contemplated an organization of an Indian government or governments, in political connexion with the United States. Commencing under the confederation, as early as 1778, it has been repeated in various treaties with different tribes down to a recent date. In a treaty "of *agreement and confederation* made with the Delawares, in September, 1778," it was "further agreed on by the contracting parties, (should it, for the future, be found conducive for the interests of both parties,) to invite any other tribes who have been friends to the interests of the United States, to join the present confederation, and to form a State, whereof the Delaware nation shall be the head, and have a representative in Congress: *Provided*, nothing contained in this article is to be considered as conclusive until it meets with the approbation of Congress."

A treaty made with the Cherokees, in 1785, provides "that the Indians may have full confidence in the justice of the United States, respecting their interests, they shall have the right to send a deputy of their choice, whenever they think fit, to Congress."

The twenty-second article of the treaty of September 30, 1830, with the Choctaws, declares that "the chiefs of the Choctaws, who have suggested that their people are in a state of rapid advancement in education and refinement, have expressed a solicitude that they might have the privilege of a delegate on the floor of the House of Representatives extended to them. The commissioners do not feel that they can, under a treaty stipulation, accede to the request, but, at their desire, present it in the treaty that Congress may consider of, and decide the application."

The increase of the white population of the country, and the encroachments of their settlements upon the Indian lands, the desire on the one hand to obtain the valuable possessions of the Indians, and on the other to get rid of, and in future avoid collision with, and the injurious influences of the proximity of, the whites; to enjoy in their own way their own freedom of government, without any other interference than that which good fellowship imposes, and to relieve the States of the embarrassment of independent Indian governments within their midst; in a word, to collect together the various Indian tribes which were scattered over many of the States of the Union, in a country free from territorial or State government, and to secure to them permanently the possession of their property, the freedom of government, their advancement in civilization, and eventual political connexion with the States, led to treaties with the various Indian tribes which inhabited the States, for the cession of their lands and their removal to a territory west of the Mississippi, and which, by these treaties, was secured to them and their descendants forever.

The first step in this work, which, however, had not then assumed the character of a system, but which led to the very promising results that followed; a step, induced as it were, by the GREAT SPIRIT, by which, through a few of the most ignorant of these then ignorant people, a plan of deliverance, of protection, of civilization, of christianization, was taken in the fall of 1808. A proposition was then made by a portion of the Cherokee tribe "to remove across the Mississippi river on some vacant lands of the United States," (in consequence of "the scarcity of game where they then lived,") there to continue *the hunter life.*" The President, in reply to this petition, in January following, said that "those who wish to remove, are permitted to send an exploring party to reconnoitre the country on the waters of the Arkansas and White rivers, and the higher up the better, as they will be the longer unapproached by our settlements, which will begin at the mouths of the rivers."

"When this party shall have found a tract of country suiting the emigrants, and not claimed by other Indians, we will arrange with them and you the exchange of that for a just portion of the country they leave, and to a part of which, proportioned to their numbers, they have a right."

Accordingly, in July, 1817, (the Indians above referred to having explored "the country on the west side of the Mississippi, and made choice of the country on the Arkansas and White rivers, and settled themselves down upon United States' lands, to which no other tribe of Indians have any just claim,") a treaty was concluded with the Cherokee nation, by which they ceded to the United States the proportion of their land to which the emigrated Indians were entitled, for which they received an equal amount of land west of the Mississippi. But this location did not long remain "unapproached by our settlements," and a second treaty was made with the tribe in 1828, the preamble of which reads: "Whereas, it being the anxious desire of the government of the United States to secure to the Cherokee nation of Indians, as well those now living within the limits of the territory of Arkansas as those of their friends and brothers who reside in States east of the Mississippi, and who may wish to join their brothers of the West, *a permanent* home, and which shall, under the most solemn guarantee of the United States, be and remain theirs forever—a home that shall never, in all future time, be embarrassed by having extended around it the lines, or placed over it the jurisdiction of a territory or State, nor be pressed upon by the extension, in any way, of any of the limits of any existing territory or State."

By the second article of the treaty, "the United States agree to possess the Cherokees, and to guarantee it to them forever, and that guarantee is hereby solemnly pledged, of seven millions of acres of land," west of Arkansas and Missouri, with an outlet west, "as far as the sovereignty of the United States and their right of soil extend." Another treaty was made with the Cherokees in 1835, by which they ceded to the United States all their remaining lands east of the Mississippi, and agreed to remove, with certain exceptions, to the country provided for them west.

In like manner the removal of another powerful tribe, the Choctaws, commenced in 1820, by exchanging for a small part of their land a country "beyond the Mississippi river, *where all who live by hunting, and will not work, may be collected together.*" This *selvage* of the tribe, separated from it, as expressed in the treaty, "to promote the civilization of the *east* Choctaw Indians by the establishment of schools among them," as with the Cherokees, became the nucleus about which the body of the nation gathered, "having far outstripped those they left behind in the arts of civilization and in the comforts of life." Of them it may be truly said: "The stone which the builders rejected, the same is become the head of the corner."

President Monroe, in his message to Congress in 1825, urged, as the best means of preserving and civilizing the Indian tribes, the policy of removal, by the acquisition from the native Indians of "a sufficient tract of country west of the State of Missouri and the Territory of Arkansas, in order to establish permanent settlements in that quarter of the tribes which were proposed to be removed." And Mr. Calhoun, then Secretary of War, in his report, recommended that "the strongest and most solemn assurances" should be given "that the country given them should be theirs as a permanent home for themselves and their posterity, without being disturbed by the encroachments of our citizens;" and, "to add to such assurances a system by which the government, without destroying their independence, would gradually unite the several tribes under a simple but enlightened system of government and laws."

This recommendation of President Monroe was again pressed upon the notice of Congress by President Jackson in his annual message of December, 1829, who recommends the removal of the Indians from the States, and adds, "as a means of effecting this end, I suggest for your consideration the propriety of setting apart an ample district, west of the Mississippi, and without the limits of any State or territory now formed, to be guarantied to the Indian tribes as long as they shall occupy it; each tribe having a distinct control over the portion designed for its use. There they may be secured in governments of their own choice, subject to no other control from the United States than such as may be necessary to preserve peace on the frontier and between the several tribes. There the benevolent may endeavor to teach them the arts of civilization, and, by promoting union and harmony among them, to raise up an interesting commonwealth, destined to perpetuate the race, and to attest the humanity and justice of this government."

On the 30th May following, an act was passed, in pursuance of this recommendation of President Jackson, providing for an exchange of lands with the Indians residing in any of the States or territories, and their removal west of the Mississippi. It also provides that, "in the making of any such exchange or exchanges, it shall and may be lawful for the President solemnly to assure the tribe or nation with which the exchange is made, that the United States will forever secure and guaranty to them, their heirs, or successors, the country so exchanged with them; and, if they prefer it, the United States will cause a patent or grant to be made and executed to them for the same: *Provided always*, That such lands shall revert to the United States if the Indians become extinct or abandon the same."

This act, adding to the executive recommendation the sanction of the legislative branch of the government, perfected a system of exchange, removal and guaranty, and pledged the national honor to its faithful observance.

Various treaties have since been made with the different tribes inhabiting the States, by which all of them have been removed or are in a state of removal. The first of these was made with the Choctaws, in September of the same year, by which they agree to "cede to the United States the entire country they own east of the Mississippi river," and to remove beyond it "as early as practicable." In consideration of which the United States promise to "cause to be conveyed to the Choctaw nation a tract of country west of the Mississippi river, in fee simple to them and their descendants, to enure to them while they shall exist as a nation and live on it, beginning," &c. It further provides that "the government and people of the United States are hereby obliged to secure to the said Choctaw nation of red people the jurisdiction and government of all the persons and property that may be within their limits west, so that no territory or State shall ever have a right to pass laws for the government of the Choctaw nation of red people and their descendants; and that no part of the land granted them shall ever be embraced in any territory or State; but the United States shall forever secure said Choctaw nation from and against all laws except such as from time to time may be enacted in their own national councils, not inconsistent with the constitution, treaties and laws of the United States; and except such as may, and which have been enacted by Congress, to the extent that Congress, under the constitution, are required to exercise a legislation over Indian affairs. But the Choctaws, should this treaty be ratified, express a wish that Congress may grant to the Choctaws the right of punishing, by their own laws, any white man who shall come into their nation, and infringe any of their national regulations."

A treaty of similar import was concluded, in February, 1831, with the Seneca Indians of Ohio, "for the removal and permanent settlement of said tribe" west of the Mississippi; and the government agreed to "grant them, by patent, in fee simple, as long as they shall exist as a nation, and remain on the same, a tract of land, situate," &c., "for which the President of the United States shall cause letters patent to be issued, in due form of law, agreeably to the act of the last session of Congress."

Similar treaties were made with several other tribes, in the same year; and, in March, 1832, a treaty was concluded with the Creeks by which the tribe ceded to the United States "all their land east of the Mississippi river," having previously exchanged a portion of their lands for others west. This treaty provides that "the Creek country west of the Mississippi shall be solemnly guarantied to the Creek Indians; nor shall any State or territory ever have a right to pass laws for the government of such Indians, but they shall be allowed to govern themselves so far as may be compatible with the general jurisdiction which Congress may think proper to exercise over them. And the United States will also defend them from the unjust hostilities of other Indians, and will also, as soon as the boundaries of the Creek country west of the Mississippi are ascertained, cause a patent or grant to be executed to the Creek tribe, agreeably to the act of Congress of May, 1830."

In the treaty of 1835 with the Cherokees, already referred to, the United States "covenant and agree that the lands ceded to the Cherokee nation in the foregoing article shall, in no future time, without their consent, be included within the territorial limits or jurisdiction of any State or territory. But they shall secure to the Cherokee nation the right, by their national councils, to make and carry into effect all such laws as they may deem necessary for the government and protection of the persons and property within their own country, belonging to their own people, or such persons as have connected themselves with them; provided, always, that they shall not be inconsistent with the constitution of the United States, and such acts of Congress as have been or may be passed regulating trade and intercourse with the Indians; and, also, that they shall not be considered as extending to such citizens, and army of the United States, as may travel or reside in the Indian country, by permission, according to the laws and regulations established by the government of the same."

In this treaty, the pledge which had, theretofore, been given to them, that they should have a delegate in Congress, was repeated to them. The 7th article says: "The Cherokee nation, having already made great progress in civilization, and deeming it important that every proper and laudable inducement should be offered to their people to improve their condition, as well as to guard and secure, in the most effectual manner, the rights guarantied to them in this treaty, and with a view to illustrate the liberal and enlarged policy of the government of the United States towards the Indians, in their removal beyond the territorial limits of the States, it is stipulated that they shall be entitled to a delegate in the House of Representatives of the United States, whenever Congress shall make provision for the same."

From the foregoing, it will be seen that the advantages obtained and promised by the United States, and the Indian tribes which inhabited the States, were reciprocal; the United States liquidating the Indian title to all lands within the States, and removing the occupants to a country free from State or territorial jurisdiction; the Indians freeing themselves from the inconvenience, and, in some instances, oppression of State jurisdiction, the injurious contamination of a proximity with the whites, and receiving the guaranty of the government for the permanency of their possessions, the indepence of their government, and their ultimate admission to political equality with citizens of the United States.

The benefits resulting to the United States, under this policy, have been fully enjoyed; and it remains for this government to carry out, in good faith, its obligations to the weaker and dependant party. So undeniable is this obligation, that your committee consider it a question of *time* rather than *principle*. Has that time arrived? Your committee believe that it has. Nor is it *now* for the first time so considered. In 1826, the Secretary of War (Mr. Barbour) recommended the organization of a territorial government over the Indian country west, and the Committee of Indian Affairs reported a bill to that effect. This bill, however, proposed a government *under the jurisdiction of the United States*, and cannot be considered in full accordance with the policy which was subsequently adopted.

The Secretary of War, Mr. Eaton, in his report submitted at the opening of the first session of the 21st Congress, (December, 1829,) remarked, in reference to the preservation of the Indian tribes, "No better plan can be thought of than that the United States shall put in operation such a system of Indian protection and government, west of Mississippi, as that a confidence may be reposed that they are, indeed, our fostered children, and the government not only so disposed to consider, but practically to evince their good feeling towards them;" and adds: "I beg leave to suggest for your consideration if an Indian territory, without the range of western States or territories, might not be advantageously created."

This subject engaged the attention of Congress in different forms until May, 1834, when the Committee on Indian Affairs, through

Mr. H. Everett, and upon the recommendation of the Executive, made a very elaborate report, accompanied by a bill providing for the organization of an *Indian territory*; securing to the Indian tribes all the rights and privileges guaranteed to them by treaty, and carrying out the oft expressed intentions of the government towards this interesting remnant of the original proprietors of the territory over which our great and glorious republic now extends.

The report sets out with this declaration: "Whatever difference of opinion may heretofore have existed, the policy of the government, in regard to the future condition of these tribes of Indians, may now be regarded as definitively settled. To induce them to remove west of the Mississippi, to a territory set apart and dedicated to their use and government forever; to secure to them there a final home; to elevate their intellectual, moral, and civil condition, and to fit them for the enjoyment of the blessings of free government, is that policy. And a further hope is now encouraged, that whenever their advancement in civilization should warrant the measure, and they desire it, that they may be admitted as a State, to become a member of the Union."

This bill failed to become a law; and in February, 1836, a new one was introduced, "to provide for the security and protection of the emigrant and other Indians west of the State of Missouri and of the Territory of Arkansas." This bill also described the boundaries of an "Indian territory," and, as the former, pledged the faith of the country to the Indians for its perpetual possession. It, too, failed to become a law.

A very full and interesting report was made to Congress at its next session, by the Commissioner of Indian Affairs, C. A. Harris, upon this subject, in which, after reviewing the action of the government in relation to these Indians, he proceeds to say: "I beg leave to observe, that the aspects, under which it now presents itself, differ materially from those in which it was submitted to Congress in 1825 and 1826. The plan of removing the Indian tribes from the States and territories was then, comparatively, in its infancy. Districts of country west of the Mississippi had been assigned to the Choctaws and Cherokees, but only a small number of either tribe had emigrated. And the views of the Executive seem to have been directed to the subject of a government for those who had gone, or might go, more as an inducement to them to remove, than as a measure immediately demanded for their protection, peace, and prosperity by any existing relations. But the act of May, 1830, gave to this matter a new character. It distinctly authorized treaties for the exchange and cession of lands, the conveyance in fee of equivalent tracts to the Indians, and the extension to them, at all times, of adequate protection. Since its passage, the current of emigration has been constantly flowing, with different degrees of rapidity at different times."

The bill last named (February, 1836) was, by direction of the Commissioner of Indian Affairs, submitted to the different tribes inhabiting the Indian country by an agent of the government, and their views taken upon the subject, after its being fully explained to them. Most of the tribes were unanimous in their concurrence in the measure, and desired that it might "be carried into effect as soon as practicable." The Choctaws are the only tribe which appear to have dissented.

The Secretary of War, Mr. Spencer, in his report to the third session of the 27th Congress, after speaking of the inadequacy of the present system of superintendents and agents to secure the Indians against the frauds and vices of the whites who hover upon their borders, remarks: "The plan of something like a territorial government for the Indians has been suggested. The object is worthy of the most deliberate consideration of all who take an interest in the fate of this helpless race."

The subject was again brought before Congress at the session of 1845–'46, by the memorial of the "American Mission Association," and a report was made by the Committee on Indian Affairs on the 22d June. The committee, after reviewing the action of the government in relation to the Indian tribes, proceed to say: "It is sufficiently evident to the committee, from a contemplation of our existing relation with the Indian tribes referred to, resulting from the rapid growth and progress of our population, that we have approximated the point when this government must decide whether existing guarantees of treaties with those tribes shall be maintained in the spirit which dictated them; whether those guarantees are sufficient for the avowed object of providing a home for the red man forever in the country assigned him; or, whether those treaties are to be set at naught, the experiment of civilization arrested, and the red race again be driven and dispersed into the wilderness." "A feeling of distrust and alarm is getting abroad on this subject among those who have long proved themselves the sincere and disinterested friends of the Indian, and for the policy adopted for the amelioration of his social condition."

"The committee will neither assert nor deny that this feeling has any just foundation in the existing condition of our relations with the Indians. It is sufficient for their purpose that it exists, and that it paralyzes, and will, until removed, continue to paralyze the efforts of good men, having for their object the cultivation and elevation of the moral attributes of the aboriginal race.

"Impressed with such like convictions, the committee do not hesitate to express their opinion that the policy of this government, as indicated by treaties with the removing tribes, so far as relates to the integrity and inviolability of territory, ought not to be abandoned, and that the guarantees of a home by those treaties should be maintained in good faith."

The committee reported a bill defining the Indian territory, but it was not acted upon by the House.

Mr. Secretary Wilkins, in his report to the 2d session, 28th Congress, in referring to the emigrated Indians, says: "In the course of the progress under our moral enterprise, for their civilization, they must eventually obtain the sagacity to look out for individual and social rights, and that degree of general intelligence to entitle them to the full extension of all the privileges of American citizens. When that time shall arrive, there will be no obstacle to political association by reason of any natural or acquired repugnance to the blood of the original American."

A report made in 1836, by the acting superintendent of Indian affairs in the western territory, Captain Wm. Armstrong, in compliance with the instructions from the commissioner, represents the condition of these emigrated Indians, at that time, highly prosperous and encouraging; a condition which the commissioner very justly remarks, "forms one of the arguments upon which the expediency of establishing a government competent to afford security and protection may be rested." The Choctaws were governed by a written constitution and laws, and had an annual general council. The chase was nearly abandoned for a living, and was pursued more as an excursion of pleasure than a source of gain. The Cherokees were far advanced in civilization. Among them were many highly intelligent men, and they had made great progress in agriculture and the mechanic arts. The Creeks and the smaller tribes had also made considerable advancement in agriculture, and they all had the means of education. Within the limits of the three larger tribes—the Choctaws, Cherokees, and Creeks—there were then seventeen churches.

The progress of civilization and improvement which, at that time, was so flatteringly described, has steadily advanced. The reports since made show that much attention has been paid to education by many of the tribes, and their example has exerted a beneficial influence over their less enlightened neighbors. The church and the school-house mark every where the march of civilization, and "the hunting path has been effaced by the ploughshare." Several of the tribes have established academies of learning, supported by their ample education funds, which would not suffer by a comparison with similar institutions of our own, and none of the tribes are without primary schools. The reports show a constant increase of scholars, male and female, and some of their best teachers of either sex are of Indian blood. The children are found to be fully as capable and ready in receiving instruction as our own race, and it were useless to add that, learned or unlearned, in peace or in war, from "Philip" down to the present day, the brighest intellect and the noblest spirit has marked the red man's fame.

The Cherokees, as well as the Choctaws, have a written constitution and laws, courts of justice, legislative council of two branches, and all the machinery of civilized government. The introduction of manual labor schools has greatly advanced the cause of education amongst the Indian tribes by uniting with ordinary instruction, the science of agriculture and the mechanic arts. The youth thus educated return to their people with a fund of *practical* knowledge, which commends them to their respect and admiration, and gives them an influence for usefulness which *letters* alone could not command. The first of these schools was introduced by the Methodist mission at Fort Leavenworth, and others have since been established amongst various tribes by the

Presbyterian, Friends, and Catholic societies. The Baptists, Moravians, and other religious and benevolent societies have done much for the improvement of these people by sending missionaries and teachers amongst them; but as civilization and education advance, these posts of instruction and usefulness are gradually filled by their own race.

Intemperance, that crowning vice of the Indian—the accursed legacy of the white man, has decreased in the ratio of their advancement in the arts of civilized life. Several of the tribes have enacted stringent prohibitory laws against its introduction, temperance societies are numerous, and in some of the tribes intoxication is said to be very rarely seen. Can we, with such a cheering history before us, longer withhold the hand of fellowship and union from a people who have such unspeakable claims upon our sympathy and protection?

Nothing, your committee believe, would so hasten the progress of civilization, and promote the improvement and happiness of these tribes, as the immediate fulfilment of the policy long and constantly indicated by the government; the integrity of their territory, independence of government, and political equality. Whatever embarrassments may have been in the way of fulfilling our treaty stipulations with a portion of these people upon former occasions, growing out of conflicting, federal, and state rights, no such impediments exist now. The Indian title to the western territory has been extinguished by the government, and Congress has the unqualified power to dispose of it as it please. A portion of it has been conveyed to the Indian tribes by treaty, and it is now proposed to perpetuate the title by patent or grants, as promised by those treaties. Your committee do not suppose that there can ever be any disposition on the part of the government to violate its plighted faith with these comparatively helpless people; but it appears that apprehensions do exist as to the inviolability of their territory, which tend to disturb their tranquility, and retard their improvement.

The committee report a bill, which is hereto annexed, embracing the general principles of the bill of 1834, with some modifications suited to the improved condition of the tribes. It describes the territory and dedicates it forever to the Indian tribes, to whom it has been or may hereafter be granted; securing to each tribe the unqualified right of self government, with jurisdiction over all persons and property within their respective limits, subject to certain exceptions founded upon established principles of international law, reserving to this government that constitutional power which it could not surrender—the regulation of trade with the Indian tribes. It also gives to the respective tribes forming the confederacy, the power of trial and punishment of all persons not belonging to the same, who may offend against their laws, subject to the approval of the governor, and in cases of capital offence the pardoning power is reserved to the President. And, for the better security of life and the promotion of peace between the several tribes, capital offences committed by a member of one tribe upon that of another, shall be subject to the regulations of the general council. It provides for a confederation of the respective tribes inhabiting the territory, who may accede thereto, with a governor, appointed in the first place by the President, a national council, and a delegate in the House of Representatives, leaving everything which can safely and profitably be committed to them to their own management and control; and contemplating a gradual withdrawal of all agency of the government in the management of their concerns, as fast and as early as their condition and the interests of the government will permit; and, to satisfy the Indians that no undue advantage is intended to be taken by the government of the tribes entering into the confederacy, provision is made for the recession of any of them whenever they shall desire so to do.

The confederation of the several tribes, and the annual assembling of delegates of their own selection, in a common council, would be a powerful stimulant to improvement. The association upon these occasions of the more intelligent members of the different tribes, would not only diffuse knowledge and a spirit of emulation throughout the whole, but it would unite them in a common bond of amity and strength. By giving them a representative in Congress, they would feel that they were no longer considered inferiors, strangers, jealous of the encroachments of power, but part and parcel of ourselves, possessing the rights and enjoying the privileges of citizens. A vigilant guardian would be placed over the administration of their affairs, and abuses and suspicions of abuse would be prevented or removed. The present expensive system of agencies, sub-agencies, and superintendencies, might be withdrawn as they became capable of managing their own affairs; and military posts, the presence of which is represented as being fraught with mischief and discontent to the Indian, being no longer required by the hostile, or supposed hostile relation which these people bear towards us, another source of expense would thereby be removed.

With these remarks the committee submit the question to the House, confident in the hope that a subject so full of interest to the red man, whose green woods and fertile plains have been again and again yielded up to the demands of civilization, until he at last rests upon our utmost verge, whose safety, if not his existence, hangs upon it, will not fail to engage its early and favorable attention.

A BILL to provide for the organization of an Indian Territory west of the Mississippi river.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that part of the territory of the United States bounded on the east by the States of Arkansas and Missouri, as far north as the south bank of the Missouri river; on the northeast by the south bank of the said Missouri river, to the mouth of the river Platte; on the north by the south bank of the said river Platte to where its north branch crosses the forty-second degree of north latitude nearest to the twenty-eighth degree of longitude west from the city of Washington, and by a line upon said latitude to the Mexican possessions, and bounded west and south by the said Mexican possessions, shall constitute a territory to be called the Indian Territory.

Sec. 2. *And be it further enacted*, That the said territory shall be forever hereafter reserved for the use of the various Indian tribes who may have a right to the same, and the faith of the United States is hereby pledged that all that part of the said territory which has been or may be granted to any of the Indian tribes, shall be, and the same is hereby, secured to them and their heirs and descendants forever, and the United States will cause a grant or patent to be made and executed for the same. And in case any two or more tribes shall unite and form a single tribe, the grants to such tribes shall enure to the benefit of such united tribe on such terms as such tribes shall agree upon: *Provided*, That such land shall revert to the United States, if the Indians, for whose benefit such grants have been or may be made, should become extinct, or abandon them.

Sec. 3. *And be it further enacted*, That each of the tribes residing within the said territory may establish and maintain such government for the regulation of their own internal affairs as to them may seem proper, not inconsistent with the constitution of the United States, or the laws thereof.

Sec. 4. *And be it further enacted*, That until otherwise provided by the people of the said territory, through the general council, and with the approval of Congress, a Governor of the said territory shall be appointed by the President, by and with the advice and consent of the Senate, who shall be, ex officio, superintendent of Indian affairs of said territory for the term of three years, and who shall take an oath of office, and shall receive, as governor and superintendent, an annual salary of three thousand five hundred dollars, which shall be in full of all charges, allowances, and emoluments of whatever nature or kind. And the said governor shall reside at such place within said territory as may be directed by the President of the United States, and shall execute such duties as may be enjoined by law, or as may be directed by the President.

Sec. 5. *And be it further enacted*, That a secretary of the said territory shall be appointed by the President, by and with the advice and consent of the Senate, for the term of four years, who shall take an oath of office, and shall receive an annual compensation of fifteen hundred dollars, which shall be in full of all charges, allowances, and emoluments of whatever nature or kind. And it shall be the duty of the said secretary to reside at the place appointed by the President of the United States for the residence of the governor. He shall keep a record of all the official proceedings of the governor of the said territory, and annually transmit copies of the same to both Houses of Congress. He shall also discharge the duties of governor of said territory during the vacation of the office, or in the absence therefrom of the governor, and shall fulfil such other duties as shall be enjoined by law, or as may be directed by the President of the United States.

Sec. 6. *And be it further enacted*, That as soon as may be after his appointment, the said governor shall convene, at some proper point, a sufficient number of the chiefs, or other representatives of the various tribes who may reside within the said territory, and shall submit to them, for their assent, such of the provisions of this act as require the co-operation of the authorities of the respective tribes, in order to carry the same into effect, and such assent, if given, shall be in writing and in duplicate, one of which duplicates shall be transmitted to the War Department, and the other shall be preserved in the office of the said governor: *Provided*, The articles of confederation shall not be binding upon any tribe unless assented to by the chiefs of such tribe, being previously authorized thereto, or unless they shall be ratified by such tribe: *Provided, also*, That such confederation shall not take effect until the tribes assenting thereto shall, in the aggregate, number at least one-fourth of the whole amount, and that thereafter other tribes in said territory may join said confederacy, and become members thereof: *And provided, further*, That any tribe entering into this confederacy may, at any time, recede therefrom by giving six months' notice to the governor of their desire so to do, in the same manner as their assent to this act is required to be given, and the governor shall immediately inform the Secretary of War of the same.

Sec. 7. *And be it further enacted*, That a general council of the several tribes giving their consent, and forming the confederacy thus provided for, shall be annually held, at such time and place as may be fixed by the governor. The said council shall consist of not less than one, nor more than five delegates from any tribe, who shall be elected by the respective tribes, or selected from the existing chiefs in proportion to their numbers, which proportion shall be determined by the governor. The general council shall have power to make all needful regulations respecting the intercourse among the several tribes, to preserve peace, to provide for their common safety, and, generally, to enact such laws as the welfare of the confederation shall demand, and as may be necessary to give effect to the purposes of this act, not inconsistent with the constitution and laws of the United States. All the laws and regulations adopted by the said council shall be submitted to the governor, for his consideration, and shall have no force unless approved by him. The governor shall also have power to convene the said council upon extraordinary occasions, and at all times to adjourn it. And the members of the council shall, until otherwise provided, receive from the United States three dollars each, per day, during their attendance at the sessions thereof, and their reasonable expenses to be settled by the governor, in going to and returning therefrom: *Provided*, That nothing herein contained shall interfere with the right of the general government to regulate the trade and intercourse between the United States, and the Indian tribes within said territory.

Sec. 8. *And be it further enacted*, That all officers and persons in the service of the United States, and all persons employed under treaty stipulations, and all persons travelling in, or through, said territory, and not residents thereof, shall be under the protection of, and subject to, the laws of the United States. And if any such officer or person shall, within said territory, commit any offence against the laws of any tribe of this confederacy, he may be tried and punished under the laws of said tribe; subject, however, to the approval of the governor, who may confirm or remit the said judgment, or remove such offender from the limits of said tribe: *Provided*, That, when the penalty be death, the judgment shall be forthwith communicated to the President, by the governor, who shall supend the execution thereof until the pleasure of the President be known. And whenever an Indian of one tribe, or any other person residing therein, except as above provided, shall commit a capital offence upon a member, or resident, of another tribe, he or she shall be apprehended, tried, and punished in such manner as shall be previously provided by the general council.

Sec. 9. *And be it further enacted*, That in accordance with pledges heretofore given by treaty, with some of the Indian tribes herein proposed to be erected into a territorial government; to promote their advancement, protect their interests, and bind them more closely to the government of the United States, it shall be competent for the said confederate tribes to elect, in such manner as the general council shall prescribe, a delegate to Congress, who shall have the same powers, privileges, and compensation as the delegates of the respective territories have.

Sec. 10. *And be it further enacted*, That it shall be lawful for any of the tribes entering into this confederacy, or the general council, to adopt, as the law of such tribe or confederacy, any, or all, of the prohibitory provisions of the laws of the United States regulating trade and intercourse with the Indians and Indian tribes, with such penalties as shall be approved by the governor, and establish tribunals for the trial of offenders against the same. And it shall be the duty of the governor to use all necessary means to carry the same into effect.

Sec. 11. *And be it further enacted*, That nothing in this act shall be construed as authorising or directing the violation of any existing treaty between the United States and any of the Indian tribes; nor shall anything in this act be construed as changing the relations now existing between the United States and any tribe within said territory, which shall not become a member of said confederacy.

THIRTIETH CONGRESS.—FIRST SESSION.

Rep. No. 737.

[To accompany bill H. R. No. 541.]

HOUSE OF REPRESENTATIVES.

ROBERT B. MITCHELL.

June 27, 1848.

Mr. Peck, from the Committee on Indian Affairs, made the following

REPORT:

The Committee on Indian Affairs, to whom was referred the petition of Robert B. Mitchell, report:

The petitioner entered upon the duties of sub-agent of the Pottawatomie Indians in November, 1845; having succeeded one Elliott in that office, whose duties terminated in October previous. In August, of that year, there was placed in the hands of Elliott the requisite funds for the first and second quarters; and, in February, 1846, in the hands of Mitchell, those applicable to the disbursements in the third and fourth quarters. Mr. Elliott, having a balance on hand of the funds turned over to him, paid the third quarter's salary to Russell, the miller; the usage of the office sanctioning the use of funds remitted for one quarter for services rendered in another or subsequent quarter; provided, they are for the same or similar objects, and under the same head of appropriation. This payment was accordingly allowed Elliott in the settlement of his account with the Indian Department.

In February, 1846, Mitchell, on the application of Russell, paid him $300, his salary for the third and fourth quarters of the same year; he having no knowledge that the salary for the third quarter had been previously paid by Elliott.

In August, 1846, Mitchell's charge for this quarter's payment was disallowed by the department, on the ground that it had been previously paid by Elliott; but it does not appear that he had any notice of this payment until that time. Russell was discharged from service in April, 1846. Mitchell claims that funds having been turned over to him to pay this quarter's salary, and having no notice of its previous payment, he was fully justified in its payment; and that the amount ($150) should be allowed him.

The committee are of this opinion, and, therefore, report the accompanying bill.